RECENT CASES

ASSAULT AND BATTERY—ADMISSIBILITY—ABUSIVE LANGUAGE BY PLAINTIFF.—THOMPSON V. SHELVERTON, 62 S. E. 220 (GA.).—*Held,* in an action for damages on account of an assault and battery, the defendant may give in evidence any opprobrious words or abusive language used by the plaintiff to him in order to justify his conduct or mitigate the damages; and it is for the jury to determine, in view of the character of the provocation and the nature and extent of the battery, whether such opprobrious words or abusive language amount to a justification, or only to a mitigation of damages recoverable.

Under the common law, opprobrious words or abusive language could not be pleaded in justification of an alleged assault and battery; *Berkner v. Dannenberg,* 116 Ga. 954. As words never constitute an assault, neither will they justify force in the protection against them, however grossly abusive they may be; *Cooley on Torts,* 3rd Ed. 289. Mere words, no matter how abusive they may be, never justify an assault; *Murry v. Boyne,* 42 Mo. 472. No provocative words or epithets will justify an assault, nor can they be given in evidence in mitigation of actual or compensatory damages, but only upon the question of punitive damages; *Goldsmith's Admr. v. Joy,* 61 Vt. 488. Yet when used at the time or immediately preceding the battery, may be shown in evidence under the general issue in mitigation of damages; *Mitchell v. Gambill,* 140 Ala. 316. Provocation cannot be shown unless it is so recent and immediate as to form part of the transaction; *Dupee v. Lentine,* 147 Mass. 580. Matters of provocation must have happened contemporaneously with the assault and battery, or so recently prior thereto, that the blood had not time to cool; *Keiser v. Smith,* 71 Ala. 481. When provocation is not immediate, but a sufficient time has elapsed for reflection and coolness, it is not admissible, even in extenuation; *Thrall v. Knapp,* 17 Ia. 468.

BAILMENTS—ACTIONS—PRESUMPTIONS AND BURDEN OF PROOF.—JOHNSON V. PERKINS, 62 S. E. 152 (GA.).—*Held,* that in all cases of bailment, after proof of loss, the burden of proof is on the bailee to show proper diligence.

This is in accord with the holdings of the courts in many states. *Burlingame v. Horne,* 30 Ill. App. 330; *Baren v. Cain,* 15 Ill. App. 387. In New York the nature of the accident may be *prima facie* proof of negligence and require proof from the bailee to counteract its effect. *Wintringham v. Hayes,* 144 N. Y. 1. Some courts, however, hold that the bailor must not only show loss but also that the damage was caused by the negligence of the bailee or his servants; *James v. Orrell,* 68 Ark. 284; *Willett v. Rich,* 142 Mass. 356; *Schmidt v. Blood,* 9 Wend. (N. Y.); and that the burden of proof may not be shifted to the bailee by showing that the subject matter had been injured in such a way that does not ordinarily occur without negligence. *Maloney v. Taft,* 60 Vt. 571.